Coram:

The Hon'ble Mr.Justice V.M.Jain, Judge.

Whether approved for reporting?[1]

For the Petitioners: Mr..Sanjeev Kuthiala, Advocate.

For the Respondents: Mr.Romesh Verma, Advocate.

V. M. Jain, J.(Oral).

This revision petition under Section 115 CPC has been filed by the appellants-petitioners against the order dated 5.8.2004 passed by the learned District Judge, Kullu, dismissing the application under Section 5 of the Limitation Act.

The facts which are relevant for the decision of the present revision petition are that Santosh Kumar etc. (respondents in the present revision petition) had filed a petition under Section 372 of the Indian Succession Act, for the grant of succession certificate, impleading general public as the respondents. Notice upon the general public was served by way of publication in the newspaper and since no one appeared on behalf of the general public, the general public was proceeded against ex parte and vide order dated 21.4.2001 the said petition was allowed and succession

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[1] Whether reporter of local papers are allowed to see the judgment ?

the affidavit of Bimla Devi, one the of the applicants-appellants. In this application it was alleged by the applicants-appellants that they came to know about the grant of succession certificate when the other side, namely, Santosh Kumar etc. were encashing the fixed deposit receipts of late Ses Ram and were taking the deposits from the saving bank account etc. It was alleged that on coming to know about the same on 21.3.2003, the applicants-appellants applied for the copy of the order of the trial court and after obtaining the same, have filed the appeal and in the process there was a delay in filing the appeal. The said application was contested by the other side, by filing a reply supported by the affidavit of Smt. Dharmi.

The learned District Judge framed issue as to whether there are sufficient grounds to condone the delay in filing the appeal. Both sides led evidence. After hearing both sides, the learned District Judge dismissed the application under Section 5 of the Limitation Act, vide order dated 5.8.2004, holding that the applicants-appellants had failed to show that there was sufficient cause for condoning the delay in filing the appeal. Aggrieved against the order dated 5.8.2004 passed by the learned District

372 of the Indian Succession Act for the grant of succession certificate, impleading the general public as the respondent, without impleading the present petitioners, namely, Bimla Devi and Radha Devi as respondents in the said petition under Section 372 of the Indian Succession Act. It was submitted that the said petition under Section 372 of the Indian Succession Act was filed by the present respondents on 28.7.2000 and that on the same day these very respondents had filed a suit for declaration, impleading the present petitioners Bimla Devi and Radha Devi as defendants, in respect of the same property, challenging the mutation which was based on the Will allegedly executed by Ses Ram. It was submitted that knowing fully well that the mutation in respect of the suit property had been sanctioned in favour of the present petitioners, the present respondents had filed the suit for declaration, impleading the present petitioners as defendants, but when the present respondents filed the petition under Section 372 of the Indian Succession Act (on the same day when the aforesaid suit was filed), the present respondents had impleaded only general public and had not impleaded the present petitioners as respondents, while seeking the grant of succession certificate. It was submitted that keeping in view that the present

Judge has illegally dismissed the application under Section 5 of the Limitation Act and that it was a fit case where the delay in filing the appeal ought to have been condoned, keeping in view the conduct of the present respondents and also keeping in view the facts and circumstances of the present case.

After hearing the learned counsel and perusing the record, in my opinion, there is force in these submissions of the learned counsel for the petitioners. A perusal of the certified copy of the order dated 21.4.2001 passed by the trial Court, in the petition under Section 372 of the Indian Succession Act for the grant of succession certificate and the judgment and decree dated 30.10.2001 passed by the trial Court, dismissing the suit for declaration filed by the present respondents, in which the present petitioners are the defendants, would clearly show that the aforesaid civil suit and the petition under Section 372 of the Indian Succession Act, both were filed by the present respondents, on the same day i.e. 28.7.2000. Both the proceedings were in respect of the property of Ses Ram. In the civil suit the present respondents were challenging the mutation in respect of the suit property, which had been sanctioned in favour of the present petitioners. On the other hand, when the present respondents filed the

petitioners were claiming their entitlement in respect of the property left by Ses Ram etc.

Once it is found that the present respondents, for reasons best known to them, had not impleaded the present petitioners as respondents in the petition under Section 372 of the Indian Succession Act and had simply impleaded the general public as respondent and had thereafter obtained the succession certificate fraudulently, in my opinion, it was a fit case where the learned District Judge ought to have condoned the delay in filing the appeal, which was filed by the present petitioners against the order dated 21.4.2001, granting succession certificate to the present respondents, especially when the present petitioners challenged the order of the trial Court only when they came to know about it. In my opinion the learned District Judge ought not to have taken a technical view of the matter while considering the application of the present petitioners under Section 5 of the Limitation Act, seeking condonation of delay in filing the appeal, keeping in view the facts and circumstances of the present case.

For the reasons recorded above, the present revision petition is allowed, the order dated 5.8.2004 passed by the learned District Judge is set aside and the application under Section 5 of the Limitation Act filed by

December 27,2005(g) **(V. M. Jain), J.**